CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH: CHENNAI

Original Application Nos.1464, 1465, 1466, 1467, 1468, 1469, 1029 and 1030 of 2012 (8 OAs)

MONDAY, THIS THE 26th DAY OF AUGUST, 2013

Present: HON'BLE SHRI B.VENKATESWARA RAO, JUDICIAL MEMBER
&
HON'BLE DR.P.PRABAKARAN, ADMINISTRATIVE MEMBER (A)

S. George Kirupanathan	... Applicant in OA 1464/2012
A.M.Arumugam	... Applicant in OA 1465/2012
K. Padmanabhan	... Applicant in OA 1466/2012
E.Palani	... Applicant in OA 1467/2012
K.Ekambaram	... Applicant in OA 1468/2012
S. Kumaresan	... Applicant in OA 1469/2012
N.Ramachandran	... Applicant in OA 1029/2012
P.Munusamy	... Applicant in OA 1030/2012

(By Advocate: M/s P. Rajendran.)

Vs.

1. The Union of India rep. By the Chairman, Railway Board, Indian Railways, Rail Bhavan, New Delhi.

2. The Deputy Director Estt.(P&A) II Railway Board, Rail Bhavan, Ministry of Railways, New Delhi.

3. The Senior Divisional Personnel Officer, DRM Office, Personnel Branch Southern Railway, Park Town,Chennai-600 003.

... **Respondents in all the OAs**

(By Advocate: Mr. V. Radhakrishnan, Senior Counsel for M/s.P.S. Eathirraj)

O R D E R

Dr.P.PRABAKARAN, MEMBER(A): The issue involved and the prayer sought for in these batch of OAs are identical, all the OAs have been heard together and we proceed to pass the following common order.

The relief sought for in the OAs reads as follows:

> "To call for the records relating to the impugned order of the Second Respondent in RBE No.131/2010, No. E(P&A)I-2010/RT-2 dated 11.09.2010 and quash the same in so far as fixation of maximum age limit of 57 years is concerned and the Consequential List issued by the Third respondent in No.M/P1(E)/578/VI/ELEC dated 09.11.2011 and quash the same in so far as the Applicant is concerned and direct the respondents to consider the claim of the applicants for retirement and for appointment of their ward, under the Liberalized Active Retirement scheme for Guaranteed Employment for Safety Staff (LARSGESS) issued by the second respondent in RBE No.131/2010, No.E(P&A)I-2010/RT-2 dated 11.9.2010 with all consequential benefits".

2. The admitted facts of the case are that as part of measures to improve the safety in railways, the Railway Board (1st respondent herein) introduced a Scheme viz., Safety Related Retirement Scheme vide P.B. Circular No.11/2004 dated 02.01.2004. This Scheme covered two categories viz., Drivers and Gangman. While Drivers are responsible for running the training, Gangman are responsible for maintenance of tracks and accordingly the Railways identified these two categories as most critical categories in so far as the safety aspect is concerned whereby introducing the above scheme they sought to provide option to the employees in the age group of 50 to 57 years to seek voluntary retirement providing an incentive in the form of employment to their wards if the wards are otherwise found qualified. Those who had completed 33 years of qualifying service and were in the age group of 55 to 57 years would be considered in the

first phase of the scheme to be followed by those in the age group of 53 years onwards but less than 55 years. The ward will be considered as per the scheme only in the lowest recruitment grade of the respective category from which the employee seeks retirement. The cut of date for reckoning the eligibility of employees for seeking retirement was fixed as 30th June of the respective year and the last date for submission of requests for retirement and consideration of a ward for appointment under the scheme was fixed as 31st July of the respective year. The 1st respondent, vide letter in RBE No.131/2010, No.E(P&A) I-2010/RT-2 dated 11.09.2010 extended the scope of the scheme to cover other safety categories of staff with a Grade Pay of Rs.1800/-. While doing so, the qualifying service has been reduced from 33 years to 20 years and the eligibility age from 55 -57 years to 50-57 years for seeking retirement under the Scheme in the case of safety categories with a Grade pay of Rs.1800/-. The nomenclature of the Scheme was also modified as Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS).

3. The applicants in these OAs fall under the Safety Categories with Grade pay of Rs.1800/-in respect of whom the above mentioned scheme was extended by Memo dated 11.9.2010 supra. The applicants submitted applications for retirement and for consideration of their wards for appointment under the LARSGESS scheme dated 11.09.2010. Since they did not get any favourable response from the respondent authorities, some of the applicants in the present batch of cases filed OA No.1522 to 1527 of 2011 before this Tribunal in which they had challenged the notification dated 11.07.2011 by which the third respondent issued instructions for operationalising the scheme notified in the Railway Board letter dated 11.09.2010, taking into account all the consequent instructions issued by the Railway Board. The OAs 1522 to 1527 of 2011 were dismissed by this Tribunal by order dated 13.6.2012 holding that as on the date

of issuance of the Notification dated 11.7.2011 the applicants were over aged and did not qualify to be considered under the LARSGESS Scheme. Now, the applicants have filed the present batch of OAs in which they have challenged fixation of age limit of 57 as the upper age limit under the Scheme on the ground that if the physical fitness of a 50 year old safety staff is considered to have been deteriorated then the physical fitness of a 58 year old person in all fairness should be deemed to be in a much more deteriorated condition thereby causing a much more serious safety hazard. The applicants have also contended that since the scheme was introduced vide first respondent memo dated 11.9.2010, the applicants are to be considered eligible with reference to that year and they contend that their applications ought to have been considered under the Scheme.

4 Upon notice, the respondents entered appearance and the respondents submit that the principle of constructive res judicata is squarely applicable in this case where the applicants had earlier filed OA 1522 to 1527 of 2011 and the OAs were dismissed by this Tribunal holding that the applicants were over aged to be considered under the Scheme. The respondents further submit that the present OAs are in the nature of indirect appeals against the earlier orders of this Tribunal dated 18.6.2012. Respondents submit that Section 11 of the Civil Procedure Code stipulates that

> "No Court shall try any suit or issue in which the mater directly and substantially in issue has been directly and substantially in issue in a former Suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent Suit or the Suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.
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> Explanation 4 "Any matter which might and ought to have been made ground of defence or attack in such former Suit shall be deemed too have been a matter directly and substantially in issue in such Suit."

The respondents submit that based upon the Principles of Constructive Res Judicata, this present Original Application is liable to be dismissed in liminie. The respondents have further submitted counter to each of the grounds taken by the applicants. The respondents submit that guidelines for implementation of LARSGESS vide memo dated 29.3.2011 in which it was spelt out that the process of retirement/recruitment under the LARSSGESS Scheme should be done twice in a year i.e first half January to June with cut off date as 1st January and second half July to December with cut off date as 1st July. It is in accordance with the above guidelines that the third respondent issued the notification dated 11.7.2011 which is impugned in these OAs. Upon receipt of applications from the applicants in these OAs, they were suitably informed by the Supervisory Officer of their ineligibility to be considered under the Scheme as they were over aged.

5. The respondents further submit that it is only after the Notification by the Chennai Division on 11.7.2011 that the applicants have got a right to be considered under the Scheme, provided they fulfill the conditions stipulated in the notification. Hence the doctrine of legitimate expectation can not be invoked by the applicants as no legal right was conferred on the applicants or their wards prior to the said notification. The respondents further submit that it was necessary to lay down the age brackets as one of the primary eligibility conditions for seeking retirement on voluntary basis so as to ensure that the organization is not deprived of experienced safety staff and also the employees do not take undue advantage of the scheme close to their normal retirement age of 60 years which will be self defeating and would be against the objective of the scheme. Hence the respondents submit that fixing an upper age limit of 57 years was fully in accordance with the objective of the Scheme. The respondents further submit that the purpose of LARSGESS is

not to give employment to unemployed wards of the Railway employees nor it is intended for grant of compassionate appointment to the wards of railway employees to mitigate their hardship. The scheme was introduced purely as a safety measure with a view to induct suitable young blood against the vacancies of those who are opting for voluntary retirement under the scheme so as to improve the over all safety of rail traffic. The respondents submit that the OAs deserve to be dismissed both by invoking the principles of res judicata and even on merit.

6. Heard the learned counsel for the applicant and the respondents. The learned counsel for the applicant elaborately argued placing emphasis on the ground that the upper age limit of 57 years was not reasonable as employees older than 57 years pose even greater safety hazard while working in the identified safety categories. The learned counsel also submitted that under the present scheme the cut off date was introduced as 1st July of the respective year and accordingly the applicants' cases ought to have been considered taking the cut off date of 1st July of the year 2010 in which year the extended scheme of LARSGESS was introduced covering further safety categories of employees to which the applicants in this present batch OAs belong. However, their legitimate expectation that their case would be considered with reference to the cut off date of 1st July 2010 was belied as the respondents have not favourably considered their applications under the LARSGESS Scheme.

7. The learned counsel for the respondents submitted that the very same issue has already been decided by this Tribunal in the batch cases in OA 1522 to 1527 of 2011 covering the very same applicants. Accordingly the issue raised in these present batch of OAs excluding OA 1020 and 1030 of 2012 have already been covered under the earlier order of this Tribunal in batch of

matters by the very same applicants. The learned counsel for the respondents also placed reliance on the judgments of the Hon'ble Supreme Court in the case of M. Nagabhushana Vs. State of Karnataka and others reported in (2011) 3 SCC 408- to substantiate the applicability of the principle of res judicata in the present batch Oas. The dictum laid down by the Hon'ble Apex Court in the relevant paragraph of the judgment reads as follows:.

> 12. The principles of Res Judicata are of universal application as it is based on two age old principles, namely, interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemo debet bis ve ari, si constet curiae quod sit pro un aet eademn cause' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.
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> 13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties.
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> .....
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> 19. A Constitution Bench of this Court in Devilal Modi Vs. Sales Tax Officer, Ratlam & Ors. - AIR 1965 SC 1150, has explained this principle in very clear terms:
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> > "But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Art. 226, cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other

principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice, vide : Daryao Vs. State of .P., 1962-1 SCR 575; (AIR 1961 SC 1457)."

20. This Court in AIMO case explained in clear terms that principle behind the doctrine of Res Judicata is to prevent an abuse of the process of Court. In explaining the said principle the Bench in All India Manufacturers Organisation (supra) relied on the following formulation of Lord Justice Somervell in Greenhalgh Vs. Mallard - (1947) 2 All ER 255 (CA):

> 39. "I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them."
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> (emphasis supplied in AIMO case)

The Bench in AIMO case also noted that the judgment of the Court of Appeal in "Greenhalgh" was approved by this Court in State of U.P. Vs. Nawab Hussain - (1977) 2 SCC 806 at page 809, para 4.

21. Following all these principles a Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. Vs. State of Maharashtra - (1990) 2 SCC 715 laid down the following principle:

> ".....an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata"

8. The learned counsel for the respondents also advanced his arguments to counter the grounds taken by the applicants. The learned counsel submitted that the authorities have thoughtfully fixed upper age limit under the scheme as otherwise the scheme is liable to be mis-used by submitting applications to opt voluntary retirement even at the verge of retirement and seeking employment for wards of the employees. The learned counsel further submitted that guidelines for operationalising the LARSGESS Scheme introduced in the month of September 2010 were issued only subsequently in the year 2011, based on which the third respondent issued the notification dated 11.7.2011 for the implementation of LARSGESS scheme in respect of the extended category of employees from the second half of 2011. By this time, the applicants have become over aged and to get over this situation, the applicants have raised untenable contentions in the present batch of OAs. The learned counsel also has drawn attention to the observations made in the orders of this Tribunal in earlier batch of OAs viz. OA 1522-1527 of 2011 dated 18.06.2012.

9. We have carefully considered the rival contention and perused the records. The LARSGESS Scheme enlarged the scope of the Safety Related Retirement Scheme for improving the overall safety of the railways by extending the same to cover additional safety categories of employees with the Grade pay of Rs.1800. The applicants in the present batch of OAs fall under this extended category of employees. We find that the applicants in OAs 1464 to 1469 of 2012 were the applicants in the earlier batch cases in OA 1522 to 1527 of 2011 which were dismissed wherein the applicants had taken exactly the very same issue that they were eligible to be considered as per the the cut off date in 2010. This Tribunal elaborately dealt with the question and had dismissed those OAs clearly finding that the applicants were over aged under the Scheme in terms of the Notification issued in 2011. The applicants again have sought to raise the same issue in the

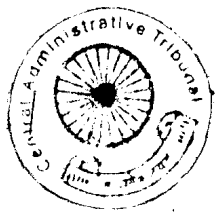
present batch of OAs viz. OAs 1464 to 1469 of 2012 which is clearly inadmissible as it would attract the principle of res judicata and thus these OAs are liable to be dismissed solely on that ground. The two other OAs ie OA 1029 and 1030 of 2012 have been filed raising the same issue and these OAs would also be clearly covered under the orders of the Tribunal in the previous OAs supra.

10. The applicants have taken additional ground in the present batch of OAs by challenging the upper age limit of 57 years under the Scheme. We find their argument untenable as the objective of the scheme is not to provide employment to their wards. It is a measure devised by the respondents to improve the over all safety of the railways by infusing new blood for which they have sought to incentivise voluntary retirement among those working in the safety categories in the prescribed age group. However, if the scheme were to be extended beyond 57 years that would possibly throw upon flood gates for rampant misuse, as even an employee close to the retirement age of 60 years would then become eligible to be considered under the scheme, if the above contentions raised by the applicants were to be accepted.

11. We find that the applicants in the present batch of OAs are falling under the categories covered by the extended scheme notified in the year 2010 and which was operationalised only in the second half of 2011. Right of an employee under any scheme would crystallize only from the date form which such scheme is effectively notified for the benefit of all the employees with clear operational guidelines. The notification issued by the third respondent dated 11.7.2011 is the notification under which the applications from those extended categories would have been considered in so far as the Southern Railways is concerned. The cut off date for determining the eligibility of the applicants is 1st July 2011 for that year by which date the applicants were already over aged as observed by this Tribunal in its earlier order dated 18.6.2012 and the claim of the applicants that

their case ought to have been considered taking the cut off date as 1.7.2010 is untenable.

12. We find that the OAs are devoid of merit and are liable to be dismissed both on the principle of res judicata as well as on merit. Accordingly the **OAs are dismissed**. We find that this is a fit case for imposing exemplary cost for bringing up issues once settled before this Tribunal, by merely adding flimsy additional grounds. However, taking a lenient view, we refrain from imposing any cost.



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